

Seung Woo Lee, Esq.
Rosicki, Rosicki & Associates, P.C.
Main Office 51 E Bethpage Road
Plainview, NY 11803
516-741-2585

UNITED STATES BANKRUPTCY COURT Hearing Date: April 12, 2018
SOUTHERN DISTRICT OF NEW YORK Hearing Time: 11:00 a.m.

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IN RE: CASE NO.: 16-12428-cgm

Yoske Imai *aka* YOSKE IMAI *aka* YOSKE
P IMAI *aka* Yosule Imai and Eiko Imai *aka*
EIKO IMAI *aka* EIKO C IMAI,

Chapter: 13

DEBTORS. CHIEF JUDGE: CECELIA G. MORRIS

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**NOTICE OF MOTION FOR
RELIEF FROM THE AUTOMATIC STAY**

SIRS:

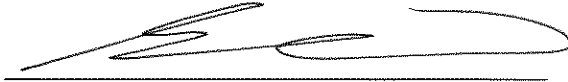
PLEASE TAKE NOTICE that MTGLQ Investors, LP ("Movant") seeks relief from the automatic stay as to the cooperative unit located at 434 East 52nd Street, Apartment 9B, New York, New York 10022, and will move before the Honorable Chief Judge Cecelia G. Morris, United States Bankruptcy Judge in the Courtroom located at the United States Bankruptcy Court for the Southern District of New York, One Bowling Green, 6th Floor, New York, NY 10004 on April 12, 2018 at 11:00 a.m. or as soon thereafter as counsel may be heard, for an Order:

1. Pursuant to Bankruptcy Rule 4001, 11 U.S.C. Section 105(a) and 11 U.S.C. Section 362(d)(1) granting Movant, its successors and/or assigns, relief from the Automatic Stay; and
2. Granting Movant such other and further relief as is just and proper.

PLEASE TAKE FURTHER NOTICE that answering affidavits, if any, are required to be served upon the undersigned at least seven (7) days before the return date of this motion.

Dated: March 14, 2018
Plainview, NY

Respectfully submitted,



ROSICKI, ROSICKI & ASSOCIATES, P.C.
By: Seung Woo Lee, Esq.
Attorneys for Movant
Main Office 51 E Bethpage Road
Plainview, NY 11803
516-741-2585

TO:
Yoske Imai *aka* YOSKE IMAI *aka* YOSKE P IMAI *aka* Yosule Imai
Debtor
434 East 52nd Street, Apt. 9B
New York, NY 10027

Eiko Imai *aka* EIKO IMAI *aka* EIKO C IMAI
Debtor
434 East 52nd Street, Apt. 9B
New York, NY 10027

Narissa A. Joseph, Esq.
Attorney for Debtor
305 Broadway
Suite 1001
New York, NY 10007

Krista M. Preuss, Esq.
Chapter 13 Standing Trustee
399 Knollwood Road
White Plains, NY 10603

U.S. Trustee
United States Trustee
Office of the United States Trustee
U.S. Federal Office Building
201 Varick Street, Room 1006
New York, NY 10014

Stiefel, Cohen & Foote P.C.
Attorneys for Creditor Southgate Owner Corp.
770 Lexington Avenue, 6th Floor
New York, New York 10065

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

IN RE:

CASE NO.: 16-12428-cgm

Yoske Imai *aka* YOSKE IMAI *aka*
YOSKE P IMAI *aka* Yosule Imai and Eiko
Imai *aka* EIKO IMAI *aka* EIKO C IMAI,

Chapter: 13

DEBTOR.

CHIEF JUDGE: CECELIA G. MORRIS

-----X

ORDER TERMINATING AUTOMATIC STAY BY DEFAULT

Upon the unopposed motion of MTGLQ Investors, LP ("Movant"), dated March 14, 2018 and seeking relief from the automatic stay, and after preliminary hearing this date, it is hereby

ORDERED that the automatic stay instituted upon filing of the within bankruptcy case is hereby terminated pursuant to 11 U.S.C. §362 (d)(1) to permit the Movant to exercise all of its rights and remedies with respect to certain collateral consisting of 167 shares of capital stock of Southgate Owners Corporation appurtenant to the cooperative unit known as 434 East 52nd Street, Apartment 9B, New York, New York 10022 and Movant shall account to this estate for any surplus proceeds realized after sale, and it is further,

ORDERED that in the event a foreclosure sale of the concerned Premises results in a deficiency, Movant, its successors and/or assigns, may amend any timely proof of claim filed herein consistent with such deficiency, and it is further

ORDERED that unless specifically provided in the loan documents signed by the debtor, the Movant, its successors and/or assigns, may not collect fees, expenses or other charges in connection with associated application, and it is further,

ORDERED that the case trustee shall be notified of any surplus monies from the foreclosure sale of the Premises.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE:

Yoske Imai aka YOSKE IMAI aka YOSKE P IMAI aka Yosule Imai and Eiko Imai aka EIKO
IMAI aka EIKO C IMAI,

Debtors.

**ORDER GRANTING RELIEF FROM
THE AUTOMATIC STAY**

ROSICKI, ROSICKI & ASSOCIATES, P.C.
Attorneys for Movant
Main Office 51 E Bethpage Road
Plainview, NY 11803
516-741-2585

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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IN RE:

CASE NO.: 16-12428-cgm

Yoske Imai *aka* YOSKE IMAI *aka*
YOSKE P IMAI *aka* Yosule Imai and Eiko
Imai *aka* EIKO IMAI *aka* EIKO C IMAI,

Chapter: 13

DEBTORS.

CHIEF JUDGE: CECELIA G. MORRIS

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**MOTION AND APPLICATION IN SUPPORT OF AN ORDER
MODIFYING AND TERMINATING THE AUTOMATIC STAY**

**TO: THE HONORABLE CECELIA G. MORRIS,
UNITED STATES BANKRUPTCY CHIEF JUDGE:**

The Application of MTGLQ Investors, LP ("Movant"), by its attorneys, Rosicki, Rosicki
& Associates, P.C., respectfully represents and says:

Seung Woo Lee, Esq., an attorney at law duly admitted to practice before this Court and
the Courts of the State of New York, hereby affirms the following to be true under penalty of
perjury:

I. RELIEF REQUESTED

1. This is a contested matter brought pursuant to Federal Rules of Bankruptcy Procedure
9013 and 9014 and Sections 361, 362(d) of Title 11 of the United States Code, 11 U.S.C. Section
101 et. seq. (the "Bankruptcy Code"), for an Order: (i) modifying and terminating the automatic
stay to permit Movant to exercise all of its rights and remedies to exercise all of its rights and
remedies with respect to certain collateral, that being 167 shares of capital stock of Southgate
Owners Corporation, appurtenant to the cooperative unit 434 East 52nd Street, Apartment 9B,
New York, New York 10022 (the "Premises"), and (ii) granting Movant such other and further
relief as the Court deems just and proper.

II. BACKGROUND

2. Movant is the holder of a Cooperative Apartment Fixed Rate Note given by Eiko Imai and a Loan Security Agreement executed by Eiko Imai and Yosek Imai (the "Debtors") in the original principal amount of \$356,170.00 pledging the Premises as security. In addition, a propriety lease was executed by the Debtors. Thereafter, the parties negotiated a loan modification agreement. The loan modification, which was effective May 1, 2012, created a new principal balance in the amount of \$383,388.65. Copies of the Cooperative Apartment Fixed Rate Note, Loan Security Agreement, Proprietary Lease, Assignment of Lease, and Loan Modification Agreement and are annexed hereto as Exhibit "A". Based upon information provided by Rushmore Loan Management Services, LLC servicer for Movant, the original note is being held by its custodian for Movant.

3. In addition, a UCC-1 Financing Statement was filed on May 23, 2016 indicating MTGLQ Investors, LP as the secured party. A copy of the UCC-1 Financing Statement is annexed hereto as Exhibit "B".

4. On August 24, 2016, the Debtors filed with the Clerk of this Court a petition for relief under Chapter 13 of the Bankruptcy Code.

5. On March 28, 2017, the Debtors' request to participate in this Court's Loss Mitigation Program with Movant was granted. Parties participated in the loss mitigation in good faith, however, the loss mitigation was not successful. Subsequently, the loss mitigation was terminated by an order of this court dated December 27, 2017.

III. THE APPLICATION

6. As required by S.D.N.Y Administrative Order # 347, and pursuant to Local Bankruptcy Rule 4001-1 and 4001-2, the completed Motion for Relief Worksheet is being filed simultaneously on the ECF Docket (the "Worksheet").

7. According to the Movant, the Debtors are in default, post-petition, under the terms of the Cooperative Apartment Fixed Rate Note, Loan Security Agreement, and Loan Modification Agreement, for failure to make timely on-going post-payments in the amount of \$1,880.54 each for the September 1, 2016 through the March 1, 2018 payments, and the loan is now post-petition due for September 1, 2016.

8. The post-petition amount in default per the within Worksheet is \$35,730.26. In the event the within Application is adjourned to a later date, the Movant requests that the motion be amended to include as post-petition arrearage, all payments that accrue from the date of the Worksheet until the adjourned hearing.

9. Section 362(d)(1) of the Bankruptcy Code provides in pertinent part that the Court shall grant relief from the stay imposed by Section 362(a) "for cause, including lack of adequate protection of an interest in property ..." As set forth herein, cause exists to vacate the automatic stay as the Debtor has failed to make monthly post-petition mortgage payments to Movant.

10. Under Section 362(d)(1), failure to make post-petition mortgage payments constitutes "cause" to modify the automatic stay. *See In re Fennell*, 495 B.R. 232, 239 (Bankr. E.D.N.Y. 2012), citing *In re Taylor*, 151 B.R. 646, 648 (Bankr. E.D.N.Y. 1993) "[a] debtor's failure to make regular mortgage payments as they become due constitutes sufficient 'cause' to lift the automatic stay;" *see also In re Schuessler*, 386 B.R. 458, 480 (Bankr. S.D.N.Y. 2008) "[t]o be sure, the failure to make mortgage payments constitutes 'cause' for relief from the automatic stay and is one of the best examples of a 'lack of adequate protection' under Section 362(d)(1) of the Bankruptcy Code".

11. Accordingly, grounds exist to vacate the stay in Debtors' case and Movant therefore requests that the automatic stay imposed under Section 362(a) of the Bankruptcy Code be modified and terminated for cause in accordance with Section 362(d) of the Bankruptcy Code to

permit Movant to pursue their rights under the Mortgage and applicable law, including without limitation, the commencement and consummation of a foreclosure action and/or eviction proceeding.

IV. CONCLUSION

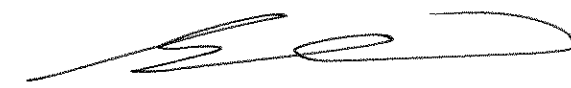
12. Relief from the stay is warranted under Section 362(d). Accordingly, the automatic stay must be modified to permit Movant to assert its rights in the Premises, including, but not limited to, the consummation of a foreclosure sale and eviction action.

13. A memorandum of law in support of the within application is being submitted herewith.

WHEREFORE, Movant respectfully requests that an Order be granted modifying the automatic stay as to it, its successors and/or assigns, permitting maintenance of mortgage foreclosure and eviction proceedings with respect to the subject property; and for such other and further relief as this Court may deem just and proper.

Dated: March 14, 2018
Plainview, NY

Respectfully submitted,



ROSICKI, ROSICKI & ASSOCIATES, P.C.
By: Seung Woo Lee, Esq.
Attorneys for Movant
Main Office 51 E Bethpage Road
Plainview, NY 11803
516-741-2585

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE:

Yoske Imai aka YOSKE IMAI aka YOSKE P IMAI aka Yosule Imai and Eiko Imai aka EIKO
IMAI aka EIKO C IMAI

Debtors

**NOTICE OF MOTION AND APPLICATION IN SUPPORT
OF MOTION FOR MODIFICATION OF THE AUTOMATIC STAY**

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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IN RE:

CASE NO.: 16-12428-cgm

Yoske Imai *aka* YOSKE IMAI *aka*
YOSKE P IMAI *aka* Yosule Imai and Eiko
Imai *aka* EIKO IMAI *aka* EIKO C IMAI,

Chapter: 13

DEBTORS.

AFFIDAVIT OF SERVICE

-----X

STATE OF NEW YORK)
) ss:
COUNTY OF NASSAU)

Alicia McNamee, being duly sworn, deposes and says:
I am not a party to this action, am over 18 years of age and reside in Suffolk County, New York.

On March 14, 2018, I served the within Notice of Motion, Application in Support of an Order Modifying and Terminating the Automatic Stay, Affidavit of Creditor in Support of Motion, proposed Order lifting the automatic stay, Memorandum of Law, and Rule 55 Affidavit on the following parties, by depositing a true copy thereof in a post-paid wrapper, in an official depository under the exclusive care and custody of the U.S. Postal Service within New York State, addressed to each of the following persons at the last known address set forth after each name:

Yoske Imai *aka* YOSKE IMAI *aka* YOSKE P IMAI *aka* Yosule Imai
434 East 52nd Street, Apt. 9B
New York, NY 10027

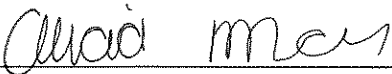
Eiko Imai *aka* EIKO IMAI *aka* EIKO C IMAI
434 East 52nd Street, Apt. 9B
New York, NY 10027

Narissa A. Joseph, Esq.
305 Broadway, Suite 1001
New York, NY 10007

Krista M. Preuss, Esq.
Chapter 13 Standing Trustee
399 Knollwood Road
White Plains, NY 10603

U.S. Trustee
United States Trustee
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U.S. Federal Office Building
201 Varick Street, Room 1006
New York, NY 10014

Stiefel, Cohen & Foote P.C.
770 Lexington Avenue, 6th Floor
New York, New York 10065



Alicia McNamee

Sworn to before me this
14 day of March, 2018


NOTARY PUBLIC

AMELIA LIPSEY
Notary Public, State of New York
No. 01LI6040254
Qualified in Nassau County
Commission Expires April 17, 2018

NOTICE OF MOTION COVER SHEET

NAME OF DEBTOR

Yoske Imai *aka* YOSKE IMAI *aka*
YOSKE P IMAI *aka* Yosule Imai and
Eiko Imai *aka* EIKO IMAI *aka* EIKO C
IMAI

PLAINTIFF/MOVANT

MTGLQ INVESTORS, LP

ATTORNEYS

Rosicki, Rosicki & Associates, P.C.
Main Office 51 E Bethpage Road
Plainview, NY 11803

PRINT NAME OF ATTORNEY Seung
Woo Lee, Esq.

CASE NUMBER

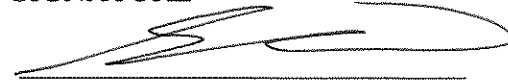
16-12428-cgm

DEFENDANT/RESPONDENT

ATTORNEYS IF KNOWN

Narissa A. Joseph, Esq.
305 Broadway
Suite 1001
New York, NY 10007

SIGNATURE



NATURE OF SUIT

(Check all Boxes That Apply to This Motion)

- ☒ To Grant Relief from the Automatic Stay
11 U.S.C. Section of 362(d) (\$181.00 fee required)
- ☐ To Withdraw the Reference of a Case
11 U.S.C. Section 157(d) (\$75.00 fee required)
- ☐ To Compel Abandonment of Property
of the Estate - B.R. 6007 (b) (\$75.00 fee required)
- ☐ To Convert (fee not required)
- ☐ To Dismiss (fee not required)
- ☐ To Assume/Reject (fee not required)
- ☐ To Extend Time to Object to Discharge/Dischargeability
- ☐ To Extend Exclusivity Period to File Plan, Etc.
- ☐ Objections to Claims
- ☐ For Summary Judgment
- ☐ Other- Specify Type of Motion _____

FILING FEE (Check One)

☐ Fee Attached

☒ Fee Paid On Line